

### **REMARKS**

The Office Action mailed July 12, 2007, has been received and reviewed. Prior to the present communication, claims 1-42 were pending in the subject application. All claims stand rejected. More specifically, claims 1-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2004/0174434 to Walker et al. (hereinafter the "Walker reference") in view of U.S. Patent No. 6,301,440 to Bolle et al. (hereinafter the "Bolle reference"). Claims 41 and 42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Walker reference in view of the Bolle reference, further in view of U.S. Patent No. 6,636,260 to Kiyokawa (hereinafter the "Kiyokawa reference"). Reconsideration of the present application in view of the above amendments and the following remarks is respectfully requested.

#### **Summary of Telephonic Interview**

Applicants would like to thank Examiner Madden and his Supervising Patent Examiner for granting a telephonic interview on October 2, 2007, and for considering proposed amendments and arguments regarding the deficiencies in the cited references, including the Walker and Bolle references.

During the interview, Applicants attempted to clarify that the claimed invention includes aggregating image metadata associated with an image capturing device and providing a third-party manufacturer of the image capturing device with a set of usage statistics based on the aggregated metadata. Thus, the manufacturer has access to difficult-to-use device features and areas of problematic usage that users of the image capturing device are facing. Examiner Madden suggested that the proposed claim amendments appear to distinguish the claims over the cited references, but noted that a further search would likely be required. Examiner Madden

encouraged Applicants to formally submit the proposed amendments. The present communication is submitted in this regard.

### **Amendments to the Claims**

Claims 1, 4, 12, 20, 29, 35, and 41 have been amended herein. Care has been exercised to avoid the introduction of new matter. Support for the amendments can be found in the Specification. *See, e.g., Specification* at p. 11, ¶¶ [0040]-[0041]; p. 12-13, ¶ [0044]; p. 16-17, ¶ [0053]. Claims 19, 21, 22, 34, and 40 have been canceled by way of the present amendment and, thus, rejection of those claims has been rendered moot.

### **Rejections based on 35 U.S.C. § 103(a)**

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some reason, or suggestions or motivations found either in the prior art references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the prior art reference or to combine prior art reference teachings to produce the claimed invention. *See, Application of Bergel*, 292 F. 2d 955, 956-957 (1961). Thus, in order “[t]o establish a *prima facie* case of obviousness, three basic criteria must

be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success [in combining the references]. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” See MPEP § 2143. Recently, the Supreme Court elaborated, at pages 13-14 of *KSR*, it will be necessary for [the Office] to look at interrelated teachings of multiple [prior art references]; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by [one of] ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the [patent application].” *KSR v. Teleflex*, 127 S. Ct. 1727 (2007).

Claims 1-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Walker reference in view of the Bolle reference. As the Walker and Bolle references, either alone or in combination, fail to teach or suggest the limitations of the claims, as amended herein, Applicants respectfully traverse this rejection as hereinafter set forth.

As currently amended, independent claim 1 recites a method for optimizing an image capturing device in order to improve image quality which comprises, in part, *aggregating* image metadata associated with the image capturing device and *providing a third party manufacturer* of the image capturing device with a set of usage statistics based on the aggregated image metadata. As stated in the Specification, using the present invention, “[t]hird-party vendors will be able to identify difficult-to-use device features and areas of problematic usage in order to find ways to increase customer interest and decrease the time required to optimize photographic devices for each customer.” *Specification* at p. 16-17, ¶ [0053]. Specifically, the

includes aggregating and uploading image metadata from the image capturing device and providing the manufacturer of the image capturing device with important usage statistics. *Specification* at p. 12-13, ¶ [0044].

By way of contrast, the Walker reference is directed to methods, cameras, and devices for prompting a user of an image capturing device with questions and suggestions. *See* Walker reference, at Abstract; p. 1, ¶ [0024]; p. 2, ¶ [0027]. The user of the image capturing device responds to the questions by providing information about a scene that the user is interested in photographing. *See id.* at p. 1, ¶ [0026] – p. 2, ¶ [0027]. After the user responds to the questions and suggestions, the method generates a number of settings adjustments based upon the user's responses. *See id.* at p. 2 ¶ [0027]. The Walker reference fails to disclose aggregating image data obtained from the image capturing device and providing that information to a third-party device manufacturer. *See generally* Walker reference. This is in contrast to the present invention, which includes precise problem and error reporting to the manufacturer, enabling the device manufacturer to optimize the current device, as well as future devices and marketing strategies. For instance, using the provided information, third-party device manufacturers will have access to difficult-to-use device features and areas of problematic usage that their users are facing. The Walker reference fails to teach or disclose these features required by currently amended independent claim 1.

Addition of the Bolle reference does not cure this deficiency. The Bolle reference is directed to a system and method for computer image processing for setting the parameters for an image capturing device. *See* Bolle reference, at Abstract; col. 2, lines 35-44; col. 2, line 62 – col. 3, line 13. Using the system, image parameters are set automatically by analyzing the image to be taken and adjusting the settings according to the analyzed image. *See id.* More

specifically, the system determines the type of photograph that the user of the image capturing device is trying to take based upon information from scene analysis and information from auxiliary sensors such as temperature and camera tilt angle. *See id.* at col. 2, line 62 – col. 3, line 13. Thus, fully automatically, the system may adjust the zoom or other settings. *See id.* at col. 6, lines 52-67. The Bolle reference, however, also fails to teach or suggest aggregating image data and providing the data to third-party device manufacturers. Accordingly, the Walker and Bolle references, either alone or in combination, fail to teach or suggest each of the limitations of currently amended independent claim 1. Thus, Applicants respectfully submit that independent claim 1 is patentable over the Walker and Bolle references. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection of this claim is respectfully requested.

Each of independent claims 12, 20, 29, 35, and 41 has been amended to include features similar to those of currently amended independent claim 1. As previously stated, the Walker reference discloses methods, cameras, and devices for prompting a user of an image capturing device with questions and suggestions, but fails to teach or suggest the aggregating and providing features of the present invention. *See generally* Walker reference. These deficiencies are not cured by the addition of the Bolle reference, which discloses a system and method for computer image processing for setting the parameters for an image capturing device. With specific reference to independent claim 41, the addition of the Kiyokawa reference, which discloses processing color matching on an input image, fails to cure this deficiency as well. Accordingly, Applicants respectfully submit that independent claims 12, 20, 29, 35, and 41 are in condition for allowance for at least the above-cited reasons for allowing independent claim 1. Thus, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of these claims as well.

Each of claims 2-11, 13-18, 23-28, 30-33, 36-39, and 42 depends, either directly or indirectly, from one of allowable independent claims 1, 12, 20, 29, 35, and 41. Accordingly, Applicants respectfully submit that these claims are patentable because the Walker and Bolle references, either alone or in combination, fail to teach or suggest each of the limitations of these claims. Thus, withdrawal of the 35 U.S.C. § 103(a) rejection of claims 2-11, 13-18, 21-28, 30-33, 36-39, and 42 is respectfully requested as well. Claims 19, 21, 22, 34, and 40 have been canceled by way of the present amendment and, thus, the rejection of these claims has been rendered moot.

Furthermore, many of the dependent claims are separately patentable because they contain additional limitations not taught or suggested by either the Walker reference or the Bolle reference. For example, dependent claim 4 recites “performing a metadata analysis with intelligent help using an accumulated usage pattern, the accumulated usage pattern including a set of analyzed and aggregated information of typical usage for the image capturing device.” As indicated in the Specification, usage patterns are accumulated, allowing for intelligent help, which determines the appropriate settings based on accumulated usage data from an image capturing device. *See, e.g., Specification* at p. 11, ¶ [0040] – [0041]; p. 16, ¶ [0053]. This is different from the templates of the Walker reference, because even where the Walker reference allows for a template image derived from a captured image, that template is not based on analyzed and aggregated information involving typical usage of an image capturing device. *See Walker reference* at ¶¶ [0600] – [0606]. In the Walker reference, the user must affirmatively create a template from captured images, whereas in the invention of claim 4, settings automatically accumulate from typical usage. *See id.* Accordingly, Applicants respectfully submit that the Walker reference fails to teach or suggest “performing a metadata analysis with

intelligent help using an accumulated usage pattern, the accumulated usage pattern including a set of analyzed and aggregated information of typical usage for the image capturing device” as recited by dependent claim 4.

Applicants respectfully submit that that Bolle reference fails to teach or suggest this limitation as well. *See generally* Bolle reference. Instead, the Bolle reference relies upon present conditions, rather than an accumulated usage pattern, to determine appropriate settings. *See* Bolle reference at Abstract; col. 2, line 62 – col. 3, line 13. Thus, the Bolle reference also fails to teach or suggest “performing a metadata analysis with intelligent help using an accumulated usage pattern, the accumulated usage pattern including a set of analyzed and aggregated information of typical usage for the image capturing device” as recited by dependent claim 4. Accordingly, Applicants respectfully submit that the Walker and Bolle references, either alone or in combination, fail to teach or suggest all of the limitations of dependent claim 4. Accordingly, in addition to the reasons stated above, withdrawal of the 35 U.S.C. § 103(a) rejection of dependent claim 4 is respectfully requested.

### CONCLUSION

For at least the reasons stated above, claims 1-18, 20, 23-33, 35-39, and 41-42 are in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of claims 1-18, 20, 23-33, 35-39, and 41-42. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned by telephone prior to issuing a subsequent action.

No other fee is believed due in connection with this Amendment, but the Commissioner is hereby authorized to charge any additional amount required or to credit any overpayment to Deposit Account No. 19-2112.

Date: October 12, 2007

Respectfully submitted,



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